

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 ANGELA F. HOOVER,

5 Plaintiff

6 v.

7 CARDWORKS SERVICING, LLC,

8 Defendant

)
)
)
) Civil Action No.:

)
) COMPLAINT AND DEMAND FOR
) JURY TRIAL

)
) (Unlawful Debt Collection Practices)

9
10 COMPLAINT

11 ANGELA F. HOOVER ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C.,
12 alleges the following against CARDWORKS SERVICING, LLC ("Defendant"):

13
14 INTRODUCTION

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
16 U.S.C. § 1692 *et seq.* ("FDCPA").
17

18
19 JURISDICTION AND VENUE

20 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
21 that such actions may be brought and heard before "any appropriate United States district court
22 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
23 jurisdiction over the federal claims contained therein.

24 3. Defendant conducts business in the Commonwealth of Pennsylvania and
25 therefore, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3
4 **PARTIES**

5 6. Plaintiff is a natural person residing in Strasburg, Pennsylvania, 17579.

6 7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

7 8. Defendant is a national debt collection company with corporate headquarters
8 located at 101 Crossways Park West, in Woodbury, New York 11797.

9 9. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6), and
10 sought to collect a consumer debt from Plaintiff.

11 10. Defendant acted through its agents, employees, officers, members, directors,
12 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

13
14
15 **PRELIMINARY STATEMENT**

16 11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute,
17 which prohibits a catalog of activities in connection with the collection of debts by third parties.
18 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
19 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
20 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
21 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
22 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
23 unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f. The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.

13. In enacting the FDCPA, the United States Congress found that “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing laws and procedures for redressing debt collection injuries to be inadequate to protect consumers. 15 U.S.C. § 1692b.

14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection practices by debt collectors, to insure that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. At all pertinent times hereto, Defendant was hired to collect a debt.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. On or about January 20, 2010, Defendant sent correspondence to Plaintiff in an attempt to collect a debt. See Exhibit A, Defendant's January 20, 2010, letter.

18. Defendant represented that it had been retained to collect an account, but failed to conspicuously identify the original creditor of the account. See Exhibit A, Defendant's January 20, 2010, letter.

19. Defendant's January 20, 2010, letter also did not clearly identify the original account number, but instead referenced "RE: 5770917107856655." See Exhibit A, Defendant's January 20, 2010, letter.

20. Defendant's correspondence was misleading, as Plaintiff could not determine from its composition the name of the original creditor nor the account that was in question.

21. Defendant's January 20, 2010, letter went on to demand a lump sum payment by deceptively claiming that "we will consider that above-referenced account settled, in full, if you [Plaintiff] make a one-time payment of \$1,069.44 (which equals 60% of the outstanding balance of \$1,782.40)." See Exhibit A, Defendant's January 20, 2010, letter.

22. Defendant's January 20, 2010, letter goes on to offer Plaintiff a second payment option, an "extended offer"; "we will consider the above-referenced account settled, in full," if you make 36 monthly payments of \$39.61. See Exhibit A, Defendant's January 20, 2010, letter.

23. Defendant's second payment option all totaled equals a balance of \$1,425.96. See Exhibit A, Defendant's January 20, 2010, letter.

1 24. This is again misleading to the Plaintiff, as she could not figure out if \$1,782.40
2 or \$1,425.96 was the original amount owed on the alleged debt, or if any of the amounts
3 Defendant quoted were correct.

4 25. Additionally Defendant's letter explains; "as long as you are enrolled in the
5 Extended Settlement Program, Defendant will cease collection activity on this account." See
6 Exhibit A, Defendant's January 20, 2010, letter.

7 26. Defendant's requirement to enter into a payment program in order for Plaintiff to
8 stop the harassment overshadows Plaintiff's right to dispute the debt and/or request verification
9 of the alleged debt.

10 27. Plaintiff believes, and therefore avers, that whatever evidence of the alleged debt
11 Defendant possessed, it was not communicated accurately in the above letter and that such
12 proof, if any, was inadequate to establish that she owed a debt.

13 28. Finally, in its correspondence to Plaintiff, Defendant stated that the Internal
14 Revenue Service (IRS) requires all financial institutions to report to it any cancellation or
15 forgiveness of debt of six hundred (\$600) or more...." See Exhibit A, Defendant's January 20,
16 2010, letter.

17 29. This statement is false as misleading, as the Internal Revenue Code only requires
18 that an applicable entity report any cancellation or discharge of indebtedness in excess of
19 \$600.00 if, and only if, an identifiable event, as defined, occurred.

20 30. There is no basis to conclude that an identifiable event has or will occur requiring
21 Defendant or the creditor to report any forgiveness of debt to the Internal Revenue Service.

22 31. Defendant's efforts in attempting to collect the alleged debt were confusing,
23 deceptive, harassing and, misleading.
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25

CONSTRUCTION OF APPLICABLE LAW

32. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

33. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

34. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection

1 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
2 collection notices. Clomon, 988 F. 2d at 1318.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED THE**
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 31. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
8 more of the following ways:

- 9 a. Harassing, oppressing or abusing Plaintiff in connection with the
10 collection of a debt, in violation of 15 U.S.C. § 1692d.
- 11 b. Using false, deceptive, or misleading representations or means in
12 connection with the collection of any debt, in violation of 15 U.S.C. §
13 1692e;
- 14 c. Using false representations or deceptive means to collect or attempt to
15 collect a debt or obtain information concerning Plaintiff, in violation of
16 15 U.S.C. § 1692e(10);
- 17 d. Using unfair or unconscionable means to collect or attempt to collect
18 any debt, in violation of 15 U.S.C. §1692f;
- 19 e. By acting in an otherwise deceptive, unfair and unconscionable manner
20 and failing to comply with the FDCPA.

21
22 WHEREFORE, Plaintiff, ANGELA F. HOOVER, respectfully prays for a judgment as
23 follows:

- 24 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
25 1692k(a)(1);
- b. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);

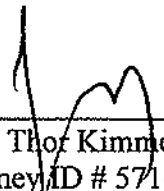
- 1 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
2 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
3 d. Any other relief deemed appropriate by this Honorable Court.
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5 **DEMAND FOR JURY TRIAL**

6 PLEASE TAKE NOTICE that Plaintiff, ANGELA F. HOOVER, demands a jury trial in
7 this case.

8 RESPECTFULLY SUBMITTED,
9 KIMMEL & SILVERMAN, P.C.
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11 DATED: January 18, 2011

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